

**REMARKS**

These Remarks are responsive to the Non-Final Office Action mailed on August 22, 2007 ("Office Action"). Claims 39-47, 49-66, and 68-86 are pending in the application, and all claims currently stand rejected. No new matter has been added. Applicants respectfully request reconsideration of the claim rejections for at least the reasons set forth below.

**I. REJECTIONS UNDER 35 U.S.C. § 103(a)**

The Office Action rejects claims 39, 41, 42, 44-47, 49-58, 60, 61, 63-66, and 68-86 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tracey (U.S. Pat. No. 6,798,413) in view of Land (U.S. Pat. No. 6,807,533), and in further view the article entitled "How to Monitor Collectors" from Credit Card Management Volume 13, Issue 4, dated July 2000 (hereinafter "Rial"). Applicants respectfully traverse the rejections.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. In re Fine, 837 F.2d 1071, 1074, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Patent Office can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of references. Id. As stated in MPEP § 2143, to establish a *prima facie* case of obviousness, there must be some rationale to modify the reference or to combine reference teachings, there must be a reasonable expectation of success, and the prior art references must teach or suggest all the claim limitations. See MPEP § 2143.

***A. Tracey, Land, and Rial fail to teach or suggest all the claimed limitations***

Applicants respectfully submit that the combination of Tracey, Land, and Rial fails to present a *prima facie* case of obviousness because the references fail to teach or disclose the following:

- "generating an account metric ... including a weighting according to at least a change in level of delinquency of the account, ... and ... assigning a score to the account agent or agents based on the account metric...wherein the score is used to evaluate the account agent or agents," as recited in claim 39;
- "identify[ing] a change in level of delinquency of the account ... generat[ing] an account metric ... including a weighting according to at least the reduction in the level of delinquency of the account; and ... assign[ing] a score to the account agent or agents based on the account metric...wherein the score is used to evaluate the account agent or agents," as recited in claim 58; or,

- “calculat[ing] a change in delinquency, as measured by the difference between the first delinquency level and the second delinquency level; and assign[ing] a performance score to the account agent or agents, based at least in part on the change in delinquency...wherein the performance score is used to evaluate the account agent or agents,” as recited in claims 77 and 82.<sup>1</sup>

As such, the combined references do not teach each and every limitation of the claims, and no *prima facie* case of obviousness exists. These traversals are explained in detail below.

### Tracey

The Office Action alleges that Tracey discloses “a computerized method for tracking accounts managed by an account agent or agents, the method comprising: receiving a baseline status of the account from an account database after a predetermined period and comparing the baseline status to the updated status, wherein the comparing operation is performed using a processor.” Office Action p. 8, *citing* Tracey, col. 15, line 15 thru col. 16, line 14 and col. 14, line 41 thru col. 15, line 13.

Specifically, in col. 15 and 16, Tracey discloses a database that stores information on debtor accounts. In addition, col. 14 recites a display system that “graphically displays the categories of debtor accounts to the collector.” Nowhere in these sections does Tracey disclose the comparison of the *baseline status* of a account to the *updated status* of the account using a *processor* as claimed. At best, Tracey discloses the use of a processor on the collector’s computer. See Tracey, col. 14, lines 44-45. This is clearly distinguishable from a processor that is adapted to perform **specific operations**, such as comparing the account status to a baseline, as recited in the claimed invention.

The Office Action alleges that Tracey discloses “generating an account metric based on the step of comparing the baseline status to the updated status, the account metric including a weighting according to at least a change in the level of delinquency of the account, wherein the generation operation is performed using a processor.” Office Action p. 3, *citing* Tracey, col. 16, lines 15-58 and col. 23, lines 6-26.

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<sup>1</sup> The Applicant paraphrases these three limitations and refers to them collectively in this reply. This is done solely for the purposes of convenience and clarity, and is not intended to alter or supplement the meaning of these claim terms.

However, Tracey does not explicitly teach “generating an account metric...including a weighting according to a least a change in level of delinquency.” Rather, Tracey’s method generates an event when a debtor account is moved from one bin to another and places each account into broad categories, such as “very good” or “average.” Tracey, col. 16, lines 15-58 and col. 23, lines 6-26. Tracey does not disclose how these rankings are obtained, nor does it discuss the use of a *weighting* factor based on the *change* in level of delinquency using a *processor* as in the claimed invention

The Office Action alleges that Tracey teaches that “accounts are assigned to debtors”, and “that the collector (agent) has a personal goal report to provide quota and goals on performance relative to other agents.” Office Action p. 3, *citing* Tracey, col. 16, lines 59-67 and col. 18, lines 20-29. It is respectfully submitted that these disclosures have nothing to do with generating an account metric based on the change in level of delinquency of an account and using said metric to assign a score to evaluate agents as is explicitly recited in the claims. Instead, Tracey’s goals relate to monitoring performance of agents on debt collection from an assigned batch of customers. In fact, Tracey is silent as to whether these goals are used in evaluating performance of the agent. Further, the goal is based on *collection* of money from customers not *delinquency* of an account, as expressly recited in the independent claims.

### Land

The Office Action alleges that:

Land teaches receiving baseline account status as well as updated account status. Col. 13, lines 37-49 and col. 14, lines 8-15 and Fig. 18-20. Land teaches managing account receivables in which credit officers receive a performance evaluation for collecting on delinquencies which are monitored and become part of the credit officer’s performance evaluation. Col. 11, lines 45 thru col. 12, line 3. An account metric is generated by a percentage of available account receivables as well as forecasted collection are monitored and reported. Col. 11, lines 45-60.

Office Action p. 3, *citing* Land. The first citation to column 13 describes account information displayed in Fig. 18. The citation to column 14 describes historical information displayed in Figure 20. The citation to Figures 18-20 discloses three illustrations of screens showing customer account information. Finally, the citations to column 11, lines 45 through column 12, line 3 discuss how to evaluate credit officers. Land describes two conventional evaluation

techniques: collections as a percent to available receivables (that is, the amount collected compared to the total amount due), and percent of forecasted collections (which are used to measure the credit officer's ability to set accurate collection targets). Land also describes credit officers being reviewed based on the "delinquency ratio," which is the ratio of number of past due loans to the total number of loans serviced. Land, col. 11, lines 65-67.

Despite the foregoing disclosures, Land says nothing about using the measure of the *change in delinquency* of an account as recited in the independent claims. Land merely discloses conventional metrics for evaluating account agents. As such, even assuming, for the sake of argument, that the Land system could be used to calculate the change in delinquency of an account over time, the reference does not provide *any* suggestion that this particular metric would be useful in "assign[ing] a score to the account agent or agents based on the account metric . . . wherein the score is used to evaluate the account agent or agents," as expressly recited in the independent claims.

**Rial**

The Office Action relies upon Rial for the apparent teaching of "assigning a score to an agent based on the account metric wherein the score is used to evaluate the agent." Office Action p. 4. Specifically, the Office Action states that "Rial teaches a method for monitoring collectors in which individual collectors are monitored by supervisors and given a score," and these scores "are included in employee performance evaluations." Office Action p. 4, *citing* Rial at pp. 1 and 3. While Rial does discuss "scoring" collection agents, the reference, however, does so in the context of evaluating the agents' aptitude at communicating with customers. Rial provides no insight whatsoever into how to "score" an agent or agents *based on any kind of account metric derived from a delinquency change*.

Rial describes common regimes for "call monitoring" — that is, "the practice of observing how agents handle calls in order to improve their skills and to enhance customers' experience with the company." Rial at p. 1. In this practice, supervisors listen in on the agents' calls, and provide feedback on how the agents' control conversations, apply company policies, comply with federal and state laws. Rial at p. 3. In addition, Rial discloses that call-center supervisors can rate the agents' abilities to "identify the customer, verify information, and practice effective listening skills" on a scale and that "[c]all-monitoring scores or other collector measurements may also be included in employee performance evaluations." Rial at p. 3. Like

Tracey and Land, however, Rial says and suggests absolutely **nothing** about using the *change in the level of delinquency* of an account as a metric for evaluating the performance of an account agent or agents, as expressly recited in the independent claims.

In view of the foregoing, none of the Tracey, Land, and Rial references recite **all** the claim limitations as alleged by the Office Action. Specifically, none of the references disclose the use of a weighted account metric based on the *change in the level of delinquency* of an account used to evaluate agents as expressly recited in the independent claims. As a result, it is respectfully requested that the aforementioned obviousness rejection of independent claims 39, 58, 77, and 82 be withdrawn.

***B. No rationale to combine Tracey, Land, and Rial***

None of the cited references disclose any kind of account agent evaluation or scoring regime in which the account agents are evaluated based upon the change in the delinquency level of an account. The fact that none of the references states this allegedly obvious feature is compelling evidence of non-obviousness. However, even if the references did recite all the claim limitations as disclosed by the invention, there is no rationale to support combining the cited references, and thus the combination is improper.

The Office Action cannot simply combine the references to obtain the claimed invention. Rather, the Office Action must combine the references and simultaneously **modify** them by taking scores associated with *accounts* and applying them to account *agents* to obtain the claimed features. However, the Office Action fails to set forth any substantiated or logical rationale to simultaneously combine and modify the references in this manner.

The Office Action on p. 4 alleges that “it would be obvious to modify Tracey and Land to include the scoring teachings of Rial because it provides a more comprehensive method for measuring a credit officer’s ability to apply company policy and goals.” First, this is counter to the claims recited in the Application. Nowhere in the claims are “company policy and goals” mentioned in the method disclosed. Second, this assertion modifies the references by extending Rial’s method of monitoring collectors with a **score**, applying the **account** scores to Land’s account **credit officer and collection agent** evaluation of **customer service** and applying it further to Tracey’s reporting of agent **collection** goals. In order to achieve the unlikely combination, all the references would have to be simultaneously **modified** and combined. This

leap in logic cannot support a finding of obviousness against the claimed invention that uses a weighted account metric based on the change in delinquency level of an account to evaluate agents.

Further, it is respectfully submitted that the aforementioned obviousness rejection of claims 41, 42, 44-47, 49-57, 60, 61, 63-66, 68, 70-76, 78-81, 83-86 has become moot in view of the deficiencies of the primary reference (i.e., Tracey) as discussed above with respect to independent claims 39, 58, 77, and 82. That is, claims 41, 42, 44-47, 49-57, 60, 61, 63-66, 68, 70-76, 78-81, 83-86 are dependent upon independent claims 39, 58, 77, and 82 and thus inherently incorporate all of the limitations of independent claims. Also, the secondary references (i.e., Land and Rial) fail to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claims 39, 58, 77, and 82. Indeed, the Examiner does not even assert such. Thus, the combination of the secondary references with the primary reference also fails to disclose, or even suggest, the deficiencies of the primary reference as discussed above with respect to independent claims 39, 58, 77, and 82. Accordingly, claims 41, 42, 44-47, 49-57, 60, 61, 63-66, 68 should be allowable over the combination of the secondary references with the primary reference at least by virtue of their dependency on independent claims 39, 58, 77, and 82. Moreover, claims 41, 42, 44-47, 49-57, 60, 61, 63-66, 68 recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

Additionally, regarding claims 44-47 and 63-66, the Examiner notes that Tracey fails to specify the types of financial accounts specified in the claims. The Examiner takes official notice that "payment of credit, revolving credit account [*sic*] and mortgage accounts are old and well known in the financial arts." Office Action p. 5. Applicants traverse this rejection because there is no support in the record for the conclusion that the identified features are "old and well known." In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his position.

Regarding claims 79, 81, 84, and 86, the Examiner notes that Tracey in view of Land in further view of Rial fails to specifically teach assigning the score based on the payment amount or an outcome rating after payment of the account. The Examiner takes official notice that "many payment amount and outcome ratings are old and well known as company procedures." Office Action p. 7. Applicants traverse this rejection because there is no support in the record

for the conclusion that the identified features are “old and well known.” In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his position.

***C. Tracey, Land, Rial, and Keyes fail to teach or suggest all the claimed limitations***

The Office Action rejects claims 40, 43, 59, and 62 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Tracey in view of Land in further view of Rial and in further view of Keyes (U.S. Pat. No. 6,456,983).

As explained above, none of the cited references disclose or suggest any situation in which an account agent (or agents) is assigned a score based on a metric derived from the ***change in delinquency*** of an account for the evaluation of the account agent (or agents), as required by all of the independent claims, nor do the cited references sufficiently disclose the limitations in the dependent claims as discussed above. Tracey, at best, discloses using goal reports for agents and managers but does not extend to actually evaluating their performance based upon these metrics. Land, at best, describes conventional account agent performance evaluation regimes, and also discloses (in contextually separate portions of the disclosure) that historical account delinquency information may be collected or observed. Land does not tie these two portions of the disclosure in any way that would lead a person of ordinary skill in the art to conclude that Land suggests that a ***change*** in delinquency can be used to measure or “score” account agent performance. Rial discusses scoring account ***agents*** based on observing how they perform on the telephone with customers, and says nothing about using ***account*** metrics — much less a change in delinquency — to evaluate account agent performance.

Keyes fails to cure the deficiencies of Tracey, Land, and Rial. For example, Keyes simply discloses using statistical data such as how long an account has been delinquent to determine whether an *account* — not an account *agent* — is worth keeping or selling, and says nothing about evaluating account agents.

***Keyes Fails to Teach or Suggest all the Claimed Limitations***

Specifically, the Applicants respectfully submit that the combination of Tracey, Land, Rial, and Keyes fails to present a *prima facie* case of obviousness because the references fail to teach or disclose:

- “generating an account metric . . . of multiplying an account balance by the change in level of delinquency of the account,” as recited in claim 40;

- “generating an account metric . . . of multiplying an account balance by an outcome rating,” as recited in claim 43;
- “wherein the processor is further adapted to generate the account metric by multiplying an account balance by the change in level of delinquency of the account,” as recited in claim 59; and
- “wherein the processor is further adapted to generate the account metric by multiplying an account balance by a risk rating,” as recited in claim 62.

As such, the combined references do not teach each and every limitation of the claims, and no *prima facie* case of obviousness exists. These traversals are explained in detail below.

### Keyes

The Office Action cites alleges that Keyes discloses “teaches a method for scoring a delinquent account which multiples [*sic*] account balance changes in delinquency/outcome ratings.” Office Action p. 7, *citing* Keyes, col. 5, line 57 thru col. 6, line 36.

Keyes does not address multiplying account balance by changes in delinquency or outcome ratings. Instead, Keyes discloses a method for determining a score “which is at least reflective of the payment which would be expected to be received on the subject . . . account.” Keyes, col. 5, lines 61-64. The score is calculated using an “appropriate statistical model.” *Id.*, col. 6, line 14. The use of two factors are disclosed: Probability 1 and Probability 2, wherein “Probability 1 is the probability of an account holder being a payor . . . and where Probability 2 is . . . the estimated portion of the balance on the subject delinquent account which will be paid over some predetermined time period.” *Id.*, col. 6, lines 16-22.

The scoring method disclosed is not used to evaluate account agent performance, but is targeted at the management of delinquent accounts for collections. Keyes teaches a regime for determining whether it is more worthwhile to keep a group of accounts and try to collect on them, or sell the accounts to other entities at a discount. *See id.*, Abstract; col. 2, lines. 3-9; *and* col. 7, line 66 thru col. 8, line 7. To do this, Keyes generates historical portfolio information that tracks the payment history from previous delinquent accounts and calculates a “score” that reflects “the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions.” *Id.*, col. 5, lines. 11-22 *and* lines 63-65. One factor that is considered in generating this score is “the lapse of time from the last payment made on the subject delinquent account,” and another is “how long the subject delinquent account has been in existence.” *Id.*, col. 6, lines 1-4. Keyes also mentions that accounts can be



scored, then re-scored when the historical portfolio of the account is “rebuilt” at a later date. Id., col. 6, lines 4-13. Using this scoring regime, Keyes is able to use historical account data (“liquidation profiles”) to determine whether it is worthwhile to keep current delinquent accounts. Id., col. 7, line 66 - col. 8, line 7. Keyes does this by comparing the current delinquent account with historical accounts having the same “score” to determine whether the account owner can expect to get a greater return by selling the account to a third party, or keeping it and continuing to try to collect on it. Id., col. 9, lines 1-4 *and* line 39 thru col. 10, line 19.

The “score,” as recited in the claimed invention, is distinguishable from the “score” in Keyes because it is based on an account metric weighted according to a change in delinquency levels and used to evaluate the account agent or agents. While Keyes does disclose the analysis of the *static* level of delinquency at a particular time, it does **not** appear use the actual *change* in delinquency for any calculation. In fact, Keyes **never does state** that the change in level of delinquency (*e.g.*, a change from three months delinquent to one month delinquent, *etc.*) is used as a weighting factor in scoring. Nor does Keyes ever state the use of a *risk* or *outcome* ratings in the computation of the scores. While Probability 2 comes close to the outcome rating as disclosed in the claimed invention, Keyes does not disclose the tying of this factor to weighting of different outcomes based upon desirability for the bank than others, as in the claimed invention. Furthermore, Keyes does not use the score to “evaluate the account agent or agents,” as explicitly recited in the independent claims; the scores in Keyes are tied to account management and whether a delinquent account should be **kept or sold**. Thus, the Office Action’s extrapolation of this alleged teaching in Keyes is unfounded.

In view of the foregoing, none of the Tracey, Land, Rial, and Keyes references recite **all** the claim limitations as alleged by the Office Action. Specifically, none of the references disclose the use of a weighted account metric based on the *change in the level of delinquency* of an account used to evaluate agents as expressly recited in the independent claims. As a result, it is respectfully requested that the aforementioned obviousness rejection of independent claims 40, 43, 59, and 62 be withdrawn.

***D. No rationale to combine Tracey, Land, Rial, and Keyes***

Even if all of the claim limitations are disclosed in the cited references, there is no rationale to combine the cited references, and thus the combination is improper.

The Office Action alleges that “it would have been obvious...to modify the categorizing teachings of Tracey in view of Land in further view of Rial in further view of Keyes because it provides for categorization of delinquent accounts based on specific account metrics.” Office Action pp. 7-8. This assertion modifies the references by extending Keyes’ teachings regarding **account** evaluation by applying the *account* scores to Land’s account **credit officer and collection agent** evaluation of **customer service** and Rial’s method of monitoring collectors with a **score** (“because it provides a more comprehensive method for measuring the credit officer’s ability to apply company policy and goals.” Office Action p. 4) and applying it further to Tracey’s reporting of agent **collection** goals. This leap in combination of references does not support a finding of obviousness against the claimed invention that uses a weighted account metric based upon a change in delinquency of an account, along with application of risk and outcome factors applied to the account balance to evaluate agents. Rial does not disclose any type of scoring system that associates the change in delinquency of an account with account agent performance, and so this reference appears to be added solely to tie the term “score” with account agent evaluations. The addition of Keyes therefore does not correct the improper combination and modification of Tracey, Land, and Rial.

**The Combination Renders Keyes Unsatisfactory for its Intended Purpose**

Keyes’ scores accounts based upon how likely it is that the bank will actually recover the delinquent funds due to those accounts. The Keyes “score” is “reflective of the payment which would be expected to be received on the subject historical delinquent account based upon certain assumptions.” Keyes, col. 5, lines. 62-65. If the score is high enough, the bank will keep the account because it is likely to recover the funds due, but if the score is too low, the bank will sell the account to a third party. See id., col. 3, lines 55-67. According to the Office Action’s logic for modifying Tracey Land, and Rial with Keyes, these same scores can also be applied directly to evaluating account agents tasked with recovering the funds due on the delinquent accounts. Office Action p. 7. But if the Office Action’s logic is followed, then it achieves an absurd result. Namely, account agents will receive higher “scores” for collecting on accounts that are **more likely to be paid in the first place**. That is, account agents would be given higher scores doing an easier task — not for excelling at their jobs. Not only would this be useless in its own right because it would not reflect the skill of the account agent or agents, but it also would be counterproductive to the conventional account agent evaluation regimes set forth in Land and

Rial. Thus, this combination would render the method in Keyes unsatisfactory for the purpose of evaluating account agent performance.

**There is No Reasonable Expectation of Success**

In view of the foregoing analysis, it will also be seen that the alleged modification to apply the scores of Keyes to the teachings of Tracey, Land, and Rial also contradicts the very alleged motivations that the Office Action relies upon to make the combination. First, there is no basis in the prior art for the statement that the combination would achieve the alleged result of “providing incentive,” “applying company policy,” or “increased efficiency” by the agent. Not only is this allegation **unfounded** in any of the cited references, it also does not make logical sense. How is giving an account agent a higher score for collecting on an “easy” account (one that is already likely to be collected) associated in any way with the agent’s efficiency? Similar, how does this provide incentive or application to company policy? The “score” in Keyes has nothing to do with agent performance, but is instead based on various statistics relating to the account. Even assuming, for the sake of argument, that it does, if there is any association, then giving agents high scores for performing easier tasks would be just as likely to instill laziness as it would be to motivate them to perform more efficiently. As such, there is no reasonable expectation that the combination and modification of the references would obtain the claimed result of increasing incentive and account agent efficiency.

**The Combination is Based on Impermissible Hindsight**

In view of these problems with the combination of the references, it appears that this combination of references is not based upon any rationale for obviousness, but is instead based upon the teachings of the present disclosure. First, the combined references do not teach all of the claim limitations unless one were to somehow extrapolate from Keyes disclosure that it actually uses the change in delinquency of an account as a statistical factor in analyzing accounts. This conclusion appears to be mere speculation, and finds no clear support in any of the Tracey, Land, Rial, or Keyes references.

Second, the combination and modification of Keyes with Tracey, Land, and Rial in which the **account** “scores” of Keyes are used to evaluate **account agent** performance is clearly an “apples-to-oranges” comparison, and, as such, suffers from several flaws because it renders the prior art subjected to the proposed combination unsuitable for its intended purpose, and has finds no logical motivation in the prior art. In view of these deficiencies, it appears that the only

possible source for a motivation to combine and modify the references lies in the present disclosure.

While the Office Action asserts that “any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning,” Applicants maintain that the issue is not merely hindsight conjecture, but the Office’s use of **impermissible** hindsight. In this case, the Office merely assumes and fails to provide any evidence as to why one of ordinary skill in the art would choose to implement the portfolio information of Tracey, the conventional metrics of Land, and the scoring regime of Rial with each other., and if so, how that would work. Rather, the Office relies on his own hindsight conjecture, which is clearly improper.

In summary, the alleged combination and modification of Tracey, Land, Rial, and Keyes is improper for at least three reasons. To begin with, as explained above, the combination is improper because it would render the portion of Land relating to evaluating account agents (which is the portion relied upon for the rejection) unsuitable for its intended purpose because it would reward account agents for collecting on delinquent accounts that are more likely to be collected upon in the first place. See MPEP §2143.01(V). Second, the combination is improper because there is no motivation in the prior art to combine and modify the references as proposed, because doing so would not obtain the benefits that allegedly provide the motivation in the first place — this suggests not only that there is no reasonable expectation that the proposed combination would be successful, but also that the alleged motivation did not exist in the first place. See MPEP § 2143.02 and 2143.01(I). Finally, the combination is improper because the prior art fails to provide any express reason to combine the references, and the alleged inherent motivation to combine the references proves to be illogical and without any merit or support, thus the proposed combination must necessarily arise as a result of impermissible hindsight based upon gleaning the disclosure of the present invention. See MPEP § 2145(X)(A).

Even assuming, for the sake of argument, that the references teach all the limitations, when taken together they fail to disclose or suggest the feature of assigning a score to an **account agent or agents** based on a metric derived from the **change in delinquency** of an account **for the evaluation of the account agent or agents**. As a result, Applicants respectfully submit that none of the reference, singly or in combination, disclose all of the claim limitations and therefore the requirements for a *prima facie* case of obviousness are not satisfied.

*E. Evidence of Non-Obviousness*

Applicant also provided, in its August 4, 2005 Request for Reconsideration, a Declaration under 37 C.F.R. § 1.132 of Dr. William F. Mann III (the "Mann Declaration") as additional evidence of non-obviousness of the claimed subject matter. The Mann Declaration was repeated in Applicants' January 6, 2006 Request for Reconsideration and mentioned again in Applicants' June 15, 2006 Request for Reconsideration. Although the Mann Declaration was previously submitted, it is fully applicable to the present rejection of the claims. Therefore, it is incorporated herein by reference. The Mann Declaration sets forth compelling evidence of non-obviousness, and fully satisfies the requirements forth in MPEP §§ 716.03.

Neither of the last four Office Actions have addressed, or even mentioned, the Mann Declaration, even after repetitious reminders to the Examiner and the PTO. As a result, Applicants can only conclude that it appears to not have been properly considered. As set forth in the Manual of Patent Examining Procedure, the failure to consider this evidence is improper: "[a] determination under 35 U.S.C. § 103 should rest on all the evidence and should not be influenced by any earlier conclusion." MPEP § 2144.08(III).

Applicants respectfully submit that the Mann Declaration clearly rebuts and invalidates the combination of the references applied against the present invention and should be considered and entered. Furthermore, this factual evidence **once again** stands wholly un rebutted by the Patent Office. For this additional reason, the Applicants request reconsideration and allowance of the pending claims.

**CONCLUSION**

The Applicants respectfully submit that the application is in condition for allowance, and therefore requests reconsideration and notice of allowance. If the Examiner believes that prosecution might be advanced by discussing the application with Applicants' counsel, in person or over the telephone, Applicants' counsel would welcome the opportunity to do so.

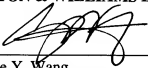
No fees are believed to be due in connection with this Response. However, if it is determined otherwise, please charge any fee and/or variance to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,

**HUNTON & WILLIAMS LLP**

Dated: October 23, 2007

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